

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU



☞ Appendix A ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2013 LRB-1702/4 (For: Rep. Genrich)

has been copied/added to the drafting file for

2013 LRB-2930 (For: Rep. Genrich)

☞ Are These "Companion Bills" ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 08/14/2013 (Per: GMM)

☞ The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2013 DRAFTING REQUEST

Bill

Received: **2/21/2013** Received By: **gmalaise**
Wanted: **3/1/2013 4:00:00 PM** Same as LRB:
For: **Eric Genrich (608) 266-0616** By/Representing: **Himself**
May Contact: Drafter: **gmalaise**
Subject: **Employ Priv - discrimination** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **Rep.Genrich@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Reasonable accomodation of an employee's pregnancy

Instructions:

See attached--draft up MD bill relating to resonable accomodationof an employee's pregnancy

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 2/21/2013	kfollett 2/26/2013	rschluet 2/26/2013	_____			
/1	gmalaise 6/26/2013			_____	lparisi 2/26/2013		
/2	gmalaise 7/17/2013	kfollett 7/1/2013	phenry 7/2/2013	_____	lparisi 7/2/2013		
/3	gmalaise	kfollett	rschluet	_____	sbasford		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	8/6/2013	7/18/2013	7/18/2013	_____	7/18/2013		
/4		kfollett	jmurphy	_____	sbasford		
		8/8/2013	8/8/2013	_____	8/8/2013		

FE Sent For:

<END>

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/2	gmalaise 7/17/2013	kfollett 7/1/2013	phenry 7/2/2013	_____	lparisi 7/2/2013		
/3		kfollett 14/15 8/8	rschlue 8/8	_____	sbsford		

Vers. Drafted

Reviewed
7/18/2013

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7/18/2013

Proofed

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/1	gmalaise 6/26/2013			_____	lparisi 2/26/2013		
/2		kfollett 7/1/2013	phenry 7/2/2013	_____	lparisi 7/2/2013		

FE Sent For:

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7/18

phenry
7/2/2013
7/18
<END>

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/1		12kf 7/1	7/2 ph	_____	lparisi 2/26/2013		

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/?	gmalaise	115f 2/26	 2/26/13	==			

FE Sent For:

<END>

Malaise, Gordon

From: Rep.Genrich
Sent: Thursday, February 21, 2013 9:27 AM
To: Malaise, Gordon
Subject: FW: Pregnancy-Related Medical Conditions

Hi Gordon -

Can you take a look at the conversation below and this [Maryland legislation](#) and then draft a bill that similarly lays out the accommodations that employers must provide to pregnant workers? I was hoping to get a draft back by March 1, if that's at all possible.

Thanks so much,

Eric Genrich
State Representative
90th Assembly District
608-266-0616

From: Taylor, Chris
Sent: Thursday, February 14, 2013 2:42 PM
To: Rep.Genrich
Subject: FW: Pregnancy-Related Medical Conditions

Eric, Leg counsel has said accommodation is not specifically addressed in statute, but comes from LIRC board. We could either codify the LIRC decisions that pregnancy must but treated as a temporary disability, which I'm not that fond of, or create our own accommodation standard, which I think is better. Chris

From: Karls-Ruplinger, Jessica
Sent: Thursday, February 14, 2013 1:17 PM
To: Taylor, Chris
Subject: RE: Pregnancy-Related Medical Conditions

Rep. Taylor,

It seems that the interpretation of s. 111.36 (1) (c), Stats., that requires pregnancy-related medical conditions to be treated as temporary disabilities, and similarly accommodated, comes from interpretations of the Labor and Industry Review Commission (LIRC). LIRC takes appeals of decisions of ALJs at DWD in several areas, including the fair employment law. In searching the LIRC digest of cases, I came across the following cases that involve s. 111.36 (1) (c), Stats.:

<http://dwd.wisconsin.gov/lirc/e127----.htm#127.12>. Of those cases, I thought the descriptions of the four cases below were most helpful. The LIRC decisions in the first two cases are available at the linked text following the cases, but the second two cases were not available online. I would also note that I was not able to find any court appellate decisions on this particular issue, nor is the issue of accommodation for pregnancy-related medical conditions specifically addressed in the statutes (other than s. 111.36 (1) (c), Stats.).

- It is not unlawful per se under the Wisconsin Fair Employment Act to treat medical conditions related to pregnancy poorly or callously. It is only unlawful to treat medical conditions related to pregnancy differently from medical

conditions related to other causes. Michno v. Pizza Hut<<http://dwd.wisconsin.gov/lirc/erdecns/116.htm>> (LIRC, 08/11/98), aff'd. sub nom. Michno v. LIRC (Lincoln Co. Cir. Ct., 02/23/99).

- There is no discrimination because of pregnancy in a policy that employees with non-work-related disabilities will be placed on leave of absence if they cannot perform their regular duties, while employees with work-related disabilities which prevent them from performing their regular duties will whenever possible be given modified duties or light work so as to allow them to continue to be employed. In such a case, the distinction is not between pregnancy-related disability and other kinds of disability. Rather, it is between work-related disability and non-work-related disability, this being a distinction which is facially neutral (and there was no evidence that such a distinction had a statistically significant impact on the employment opportunities of pregnant females). Hager v. Heyde Health Systems-Eagleton Homes<<http://dwd.wisconsin.gov/lirc/erdecns/713.htm>> (LIRC, 04/29/92).
- Pregnancy and pregnancy-related medical conditions are not covered by the handicap discrimination provisions of the WFEA. The WFEA prohibits discrimination on the basis of pregnancy as a form of sex discrimination. Goodrich v. Duro Paper Bag Mfg. Co. (LIRC, 02/14/92).
- Where the employer included absences caused by pregnancy in computing total use of accident and sickness leave benefits and disciplined all employees who used excessive amounts of these benefits, there was no violation of the Act. The Complainants failed to prove disparate impact on females since the statistical evidence was insufficient to demonstrate that females were affected by this discipline policy at a rate greater than that which would normally be expected. Also, it was not illegal for the employer to treat pregnancy disability in the same fashion that it treated all other disabilities when disabilities were a factor with disciplinary rather than benefit consequences. The Act simply requires that disability connected to pregnancy be treated the same as other disabilities; it does not require that no negative consequences ever be allowed to flow from pregnancy-related disabilities. Lane v. Uniroyal Tire Co. (LIRC, 04/26/88).

Jessica

Jessica Karls-Ruplinger
Senior Staff Attorney
Wisconsin Legislative Council
(608) 266-2230
Jessica.Karls@legis.wisconsin.gov<<mailto:Jessica.Karls@legis.wisconsin.gov>>

From: Taylor, Chris
Sent: Tuesday, February 12, 2013 1:53 PM
To: Karls-Ruplinger, Jessica
Subject: RE: Pregnancy-Related Medical Conditions

Thanks Jessica, but is there anything in state law besides the DWD advisory which says that women with pregnancy related issues be accommodated? Thanks!

From: Karls-Ruplinger, Jessica
Sent: Tuesday, February 12, 2013 11:41 AM
To: Taylor, Chris
Cc: Trost, Craig
Subject: Pregnancy-Related Medical Conditions

Rep. Taylor,

You asked whether the Wisconsin Fair Employment Law prohibits discrimination based on pregnancy-related medical conditions. The answer is yes, and it's covered under s. 111.36 (1) (c), Stats., which provides that employment discrimination because of sex includes, but is not limited to, any of the following actions by any employer, labor organization, employment agency, licensing agency or other person:... (c) Discriminating against any woman on the basis of pregnancy, childbirth, maternity leave or related medical conditions by engaging in any of the actions prohibited under s. 111.322<<http://docs.legis.wi.gov/document/statutes/111.322>>, including, but not limited to, actions concerning fringe benefit programs covering illnesses and disability.

In addition, the following DWD publication advises that employees with pregnancy-related medical conditions should be treated as temporarily disabled employees: http://dwd.wisconsin.gov/er/discrimination_civil_rights/publication_erd_7550_p.htm.

Jessica

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HOUSE BILL 804

D5, K3, P4

3lr1784
CF SB 784

By: Delegates Hucker, Carr, Cullison, Donoghue, A. Kelly, Reznik, and
Tarrant

Introduced and read first time: February 6, 2013

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Employment Discrimination – Reasonable Accommodations for Disabilities**
3 **Due to Pregnancy**

4 FOR the purpose of requiring an employer, if an employee requests a reasonable
5 accommodation for a disability caused or contributed to by pregnancy, to explore
6 with the employee certain means of reasonably accommodating the disability;
7 requiring an employer to transfer an employee to a less strenuous or less
8 hazardous position for a certain period of time under certain circumstances;
9 authorizing an employer to require an employee to provide a certain
10 certification from a health care provider under certain circumstances; requiring
11 an employer to post in a certain location, and to include in a certain handbook,
12 information concerning an employee's rights to reasonable accommodations and
13 leave for a disability caused or contributed to by pregnancy; prohibiting an
14 employer from interfering with, restraining, or denying the exercise of, or the
15 attempt to exercise, certain rights; providing that a certain provision of law may
16 not be construed to affect any other provision of law relating to discrimination
17 on the basis of sex or pregnancy or to diminish in any way certain coverage of
18 pregnancy, childbirth, or a related medical condition; defining a certain term;
19 and generally relating to reasonable accommodations for temporary disabilities
20 due to pregnancy.

21 BY repealing and reenacting, without amendments,
22 Article – State Government
23 Section 20–601(a) through (d) and 20–606(a)(4)
24 Annotated Code of Maryland
25 (2009 Replacement Volume and 2012 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – State Government
28 Section 20–609

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2012 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article – State Government**

6 20–601.

7 (a) In this subtitle the following words have the meanings indicated.

8 (b) (1) “Disability” means:

9 (i) 1. a physical disability, infirmity, malformation, or
10 disfigurement that is caused by bodily injury, birth defect, or illness, including
11 epilepsy; or

12 2. a mental impairment or deficiency;

13 (ii) a record of having a physical or mental impairment as
14 otherwise defined under this subsection; or

15 (iii) being regarded as having a physical or mental impairment
16 as otherwise defined under this subsection.

17 (2) “Disability” includes:

18 (i) 1. any degree of paralysis, amputation, or lack of
19 physical coordination;

20 2. blindness or visual impairment;

21 3. deafness or hearing impairment;

22 4. muteness or speech impediment; and

23 5. physical reliance on a service animal, wheelchair, or
24 other remedial appliance or device; and

25 (ii) retardation and any other mental impairment or deficiency
26 that may have necessitated remedial or special education and related services.

27 (c) (1) “Employee” means an individual employed by an employer.

28 (2) Unless the individual is subject to the State or local civil service
29 laws, “employee” does not include:

- 1 (i) an individual elected to public office;
- 2 (ii) an individual chosen by an elected officer to be on the
3 officer's personal staff;
- 4 (iii) an appointee on the policy making level; or
- 5 (iv) an immediate adviser with respect to the exercise of the
6 constitutional or legal powers of an elected office.

7 (d) (1) "Employer" means:

8 (i) a person that:

- 9 1. is engaged in an industry or business; and
- 10 2. has 15 or more employees for each working day in
11 each of 20 or more calendar weeks in the current or preceding calendar year; and

12 (ii) an agent of a person described in item (i) of this paragraph.

13 (2) "Employer" includes the State to the extent provided in this title.

14 (3) Except for a labor organization, "employer" does not include a bona
15 fide private membership club that is exempt from taxation under § 501(c) of the
16 Internal Revenue Code.

17 20-606.

18 (a) An employer may not:

19 (4) fail or refuse to make a reasonable accommodation for the known
20 disability of an otherwise qualified employee.

21 20-609.

22 (A) IN THIS SECTION, "REASONABLE ACCOMMODATION" MEANS AN
23 ACCOMMODATION:

24 (1) FOR AN EMPLOYEE'S DISABILITY CAUSED OR CONTRIBUTED
25 TO BY PREGNANCY; AND

26 (2) THAT DOES NOT IMPOSE AN UNDUE HARDSHIP ON THE
27 EMPLOYEE'S EMPLOYER.

1 **[(a)] (B)** Disabilities caused or contributed to by pregnancy or childbirth:

2 (1) are temporary disabilities for all job-related purposes; and

3 (2) shall be treated as temporary disabilities under any health or
4 temporary disability insurance or sick leave plan available in connection with
5 employment.

6 **[(b)] (C)** Written and unwritten employment policies and practices
7 involving matters such as the commencement and duration of leave, the availability of
8 extensions of leave, the accrual of seniority and other benefits and privileges,
9 reinstatement, and payment under any health or temporary disability insurance or
10 sick leave plan, formal or informal, shall be applied to disability due to pregnancy or
11 childbirth on the same terms and conditions as they are applied to other temporary
12 disabilities.

13 **(D)** **IF AN EMPLOYEE REQUESTS A REASONABLE ACCOMMODATION, THE**
14 **EMPLOYER SHALL EXPLORE WITH THE EMPLOYEE ALL POSSIBLE MEANS OF**
15 **PROVIDING THE REASONABLE ACCOMMODATION, INCLUDING:**

16 (1) **CHANGING THE EMPLOYEE'S JOB DUTIES;**

17 (2) **CHANGING THE EMPLOYEE'S WORK HOURS;**

18 (3) **RELOCATING THE EMPLOYEE'S WORK AREA;**

19 (4) **PROVIDING MECHANICAL OR ELECTRICAL AIDS;**

20 (5) **TRANSFERRING THE EMPLOYEE TO A LESS STRENUOUS OR**
21 **LESS HAZARDOUS POSITION; OR**

22 (6) **PROVIDING LEAVE.**

23 **(E)** **IF AN EMPLOYEE REQUESTS A TRANSFER TO A LESS STRENUOUS OR**
24 **LESS HAZARDOUS POSITION AS A REASONABLE ACCOMMODATION, THE**
25 **EMPLOYER SHALL TRANSFER THE EMPLOYEE FOR A PERIOD OF TIME UP TO THE**
26 **DURATION OF THE EMPLOYEE'S PREGNANCY IF:**

27 (1) **THE EMPLOYER HAS A POLICY, PRACTICE, OR COLLECTIVE**
28 **BARGAINING AGREEMENT REQUIRING OR AUTHORIZING THE TRANSFER OF A**
29 **TEMPORARILY DISABLED EMPLOYEE TO A LESS STRENUOUS OR LESS**
30 **HAZARDOUS POSITION FOR THE DURATION OF THE DISABILITY; OR**

1 (2) THE EMPLOYEE'S HEALTH CARE PROVIDER ADVISES THE
2 TRANSFER AND THE EMPLOYER CAN PROVIDE THE REASONABLE
3 ACCOMMODATION BY TRANSFERRING THE EMPLOYEE WITHOUT:

4 (I) CREATING ADDITIONAL EMPLOYMENT THAT THE
5 EMPLOYER WOULD NOT OTHERWISE HAVE CREATED;

6 (II) DISCHARGING ANY EMPLOYEE;

7 (III) TRANSFERRING ANY EMPLOYEE WITH MORE SENIORITY
8 THAN THE EMPLOYEE REQUESTING THE REASONABLE ACCOMMODATION; OR

9 (IV) PROMOTING ANY EMPLOYEE WHO IS NOT QUALIFIED TO
10 PERFORM THE JOB.

11 (F) (1) AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO PROVIDE A
12 CERTIFICATION FROM THE EMPLOYEE'S HEALTH CARE PROVIDER CONCERNING
13 THE MEDICAL ADVISABILITY OF A REASONABLE ACCOMMODATION TO THE SAME
14 EXTENT A CERTIFICATION IS REQUIRED FOR OTHER TEMPORARY DISABILITIES.

15 (2) A CERTIFICATION UNDER PARAGRAPH (1) OF THIS
16 SUBSECTION SHALL INCLUDE:

17 (I) THE DATE THE REASONABLE ACCOMMODATION BECAME
18 MEDICALLY ADVISABLE;

19 (II) THE PROBABLE DURATION OF THE REASONABLE
20 ACCOMMODATION; AND

21 (III) AN EXPLANATORY STATEMENT AS TO THE MEDICAL
22 ADVISABILITY OF THE REASONABLE ACCOMMODATION.

23 (G) AN EMPLOYER SHALL POST IN A CONSPICUOUS LOCATION, AND
24 INCLUDE IN ANY EMPLOYEE HANDBOOK, INFORMATION CONCERNING AN
25 EMPLOYEE'S RIGHTS TO REASONABLE ACCOMMODATIONS AND LEAVE FOR A
26 DISABILITY CAUSED OR CONTRIBUTED TO BY PREGNANCY.

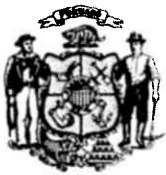
27 (H) AN EMPLOYER MAY NOT INTERFERE WITH, RESTRAIN, OR DENY THE
28 EXERCISE OF, OR THE ATTEMPT TO EXERCISE, ANY RIGHT PROVIDED UNDER
29 THIS SECTION.

30 (I) THIS SECTION MAY NOT BE CONSTRUED TO:

1 (1) AFFECT ANY OTHER PROVISION OF LAW RELATING TO
2 DISCRIMINATION ON THE BASIS OF SEX OR PREGNANCY; OR

3 (2) DIMINISH IN ANY WAY THE COVERAGE OF PREGNANCY,
4 CHILDBIRTH, OR A MEDICAL CONDITION RELATED TO PREGNANCY OR
5 CHILDBIRTH UNDER THIS SECTION.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2013.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1702/P
GMM...

IN 2/21
Wanted 3/1

Gen

- 1 AN ACT ...; relating to: reasonable accommodation of an employee's temporary
2 inability to adequately undertake the job-related responsibilities of a
3 particular job because of of pregnancy or a related medical condition.

Analysis by the Legislative Reference Bureau

X Current law prohibits employment discrimination on the basis of sex, including discrimination against any woman on the basis of pregnancy or a related medical condition. Current law also prohibits employment discrimination on the basis of disability, including refusing to reasonably accommodate an employee's disability, but the Labor and Industry Review Commission (LIRC) has held that pregnancy and pregnancy-related medical conditions are covered under the sex discrimination, and not the disability discrimination, provisions of the Fair Employment Law. *Goodrich v. Duro Paper Bag Mfg. Co, Inc.* (LIRC 02/14/92).

This bill provides that employment discrimination on the basis of sex includes refusing to reasonably accommodate an employee's temporary inability to adequately undertake the job-related responsibilities of a particular job because of pregnancy or a related medical condition, unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise, or business.

Specifically, the bill requires an employer to explore with an employee who requests a reasonable accommodation because of pregnancy or a related medical condition (reasonable accommodation) all possible means of providing the reasonable accommodation, including changing the employee's job responsibilities, changing the employee's work hours, relocating the employee's work area, providing mechanical or electronic aids to the employee, transferring the employee to a less strenuous or less hazardous job, or providing family or medical leave to the employee.

Further, the bill requires an employer, on the request of an employee for a transfer to a less strenuous or less hazardous job as a reasonable accommodation, to transfer the employee for a period up to the duration of the employee's pregnancy if: 1) the employer has a policy or practice, or is subject to a collective bargaining agreement, authorizing or requiring the transfer of an employee with a temporary disability to a less strenuous or less hazardous job for the duration of the disability; or 2) the employee's health care provider advises the transfer, and the employer can provide the transfer without creating additional employment that the employer would not have created otherwise, discharging any employee, transferring any other employee with more seniority than the employee requesting the transfer, or promoting to a particular job any employee who is not qualified to perform the job.

Finally, the bill permits an employer to require an employee who requests a reasonable accommodation to provide certification issued by the employee's health care provider of the medical advisability of the reasonable accommodation to the same extent that the employer requires certification for a temporary disability.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 111.36 (1) (c) of the statutes is renumbered 111.36 (1) (c) (intro.) and
2 amended to read:

3 111.36 (1) (c) (intro.) Discriminating against any woman on the basis of
4 pregnancy, childbirth, maternity leave, or a related medical conditions by engaging
5 condition by doing any of the following:

6 1. Engaging in any of the actions prohibited under s. 111.322, including, but
7 not limited to, actions any action concerning fringe benefit programs covering
8 illnesses and disability.

9 History: 1981 c. 334 ss. 7m, 22; 1981 c. 391; 1993 a. 427.

9 SECTION 2. 111.36 (1) (c) 2. of the statutes is created to read:

10 111.36 (1) (c) 2. Refusing to reasonably accommodate an employee's temporary
11 inability to adequately undertake the job-related responsibilities of a particular job
12 because of pregnancy or a related medical condition as provided in sub. (4), unless
13 the employer can demonstrate that the accommodation would pose a hardship on the
14 employer's program, enterprise, or business.

1 **SECTION 3.** 111.36 (4) of the statutes is created[✓] to read:

2 111.36 (4) (a) If an employee requests a reasonable accommodation described[✓]
3 in sub. (1) (c) 2., the employer shall explore with the employee all possible means of[✓]
4 providing the reasonable accommodation, including changing the employee's job[✓]
5 responsibilities, changing the employee's work hours, relocating the employee's work
6 area, providing mechanical or electronic aids to the employee, transferring the
7 employee to a less strenuous or less hazardous job, or providing family or medical
8 leave to the employee.

9 (b) If an employee requests transfer to a less strenuous or less hazardous job[✓]
10 as a reasonable accommodation described in sub. (1) (c) 2., the employer shall[✓]
11 transfer the employee as requested for a period up to the duration of the employee's
12 pregnancy if any of the following apply:

13 1. The employer has a policy or practice, or is subject to a collective bargaining
14 agreement, authorizing or requiring the transfer of an employee with a temporary
15 disability to a less strenuous or less hazardous job for the duration of the disability.

16 2. The employee's health care provider or Christian Science practitioner, as[✓]
17 defined in s. 103.10 (1) (am), advises the transfer, and the employer can provide the[✓]
18 transfer without creating additional employment that the employer would not have[✓]
19 created otherwise, discharging[✓] any employee, transferring[✓] any other employee with[✓]
20 more seniority than the employee requesting the transfer, or promoting to a
21 particular job any employee who is not qualified to perform the job.

22 (c) If an employee requests a reasonable accommodation described in sub. (1)[✓]
23 (c) 2., the employer may require the employee to provide certification issued by the[✓]
24 employee's health care provider or Christian Science practitioner of the medical[✓]
25 advisability of the reasonable accommodation to the same extent that the employer

1 requires certification for a temporary disability. No employer may require
2 certification under this paragraph[✓] stating more than the following:

3 1. That the employee requires the reasonable accommodation.

4 2. The date on which the reasonable accommodation became medically
5 advisable and the probable duration for which the reasonable accommodation will
6 be medically advisable.

7 3. An explanation of why the reasonable accommodation is medically
8 advisable.

9 **SECTION 4. Nonstatutory provisions.**

10 (1) EMPLOYMENT DISCRIMINATION POSTER. The department of workforce
11 development shall revise the poster prepared under section DWD 218.23, Wisconsin
12 Administrative Code, to include information concerning an employee's right to
13 reasonable accommodation because of pregnancy or a related medical condition
14 under section 111.36 (1) (c) 2.[✓] and (4)[✓] of the statutes, as created by this act.

15 **SECTION 5. Initial applicability.**

16 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee
17 who is affected by a collective bargaining agreement containing provisions with this
18 act on the day on which the collective bargaining agreement expires or is extended,
19 modified, or renewed, whichever occurs first.

20

(END)

Malaise, Gordon

From: Peters, Steve
Sent: Wednesday, June 12, 2013 2:00 PM
To: Malaise, Gordon
Subject: FW: Red-lined version of bill
Attachments: Wisconsin bill-ABB redline 6-10-13.doc

Gordon,

Here are the edits I spoke of.

Steven Peters
Office of Representative Eric Genrich
304W State Capitol
608-266-0617

-----Original Message-----

From: Rep.Genrich
Sent: Wednesday, June 12, 2013 1:56 PM
To: Peters, Steve
Subject: FW: Red-lined version of bill

Hey Steve - Can you get this over to Gordon Malaise if you haven't already?

Thanks!

Eric Genrich
State Representative
90th Assembly District

From: Elizabeth Gedmark [egedmark@abetterbalance.org]
Sent: Monday, June 10, 2013 9:18 AM
To: Dina Bakst; Rep.Genrich; Dana Schultz
Subject: Red-lined version of bill

Dear Representative Genrich,

We wanted to thank you again for taking up this vitally important issue. I'm attaching a redlined version of the bill reflecting the issues we discussed. For example, as you'll see, we took out the health care certification provision since there is no similar provision for workers with disabilities--adding an extra requirement for pregnant workers risks violating the federal Pregnancy Discrimination Act, and we wanted to be sure that they are provided with equal treatment.

We would be happy to discuss this with you further and can provide you with any materials you need for making the case for this important issue. We look forward to working with you.

Best,
Dina & Elizabeth

--
Elizabeth Gedmark

Law Fellow

A Better Balance: The Work & Family Legal Center
80 Maiden Lane, Suite 606
New York, NY 10038

Office: 212-430-5982

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2013 – 2014 LEGISLATURE

2013 BILL

AN ACT to renumber and amend 111.36 (1) (c); and to create 111.36 (1) (c) 2, 111.36 (1) (c) 3, and 111.36 (4) of the statutes; relating to: reasonable accommodation of an employee's ~~temporary~~ inability to adequately undertake the job-related responsibilities of a particular job because of a known condition related to pregnancy or a related medical condition: childbirth.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 111.36 (1) (c) of the statutes is renumbered 111.36 (1) (c) (intro.) and amended to read:

111.36 (1) (c) (intro.) Discriminating against any woman on the basis of pregnancy, childbirth, maternity leave, or ~~a related medical conditions by engaging~~ condition by doing any of the following:

1. Engaging in any of the actions prohibited under s. 111.322, including, but not limited to, ~~but not limited to, actions~~ any action concerning fringe benefit programs covering illnesses and disability.

SECTION 2. 111.36 (1) (c) 2. of the statutes is created to read:

111.36 (1) (c) 2. Refusing to reasonably accommodate an employee's ~~temporary~~ inability to adequately undertake the job-related responsibilities of a particular job because of a known condition related to pregnancy or childbirth, including, but not limited to,

lactation, or a related medical condition as provided in sub. (4), unless

the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise, or business.

SECTION 3. 111.36 (1) (c) 3. of the statutes is created to read:

111.36 (1) (c) 3. Requiring an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided for an employee's inability to adequately undertake the job-related responsibilities of a particular job because of a known condition related to pregnancy or childbirth including, but not limited to, lactation.

SECTION 43. 111.36 (4) of the statutes is created to read:

111.36 (4) (a) If an employee requests a reasonable accommodation described in sub. (1) (c) 2., the employer shall explore with the employee all possible means of providing the reasonable accommodation, including, but not limited to, changing the employee's job responsibilities, changing the employee's work hours, relocating the employee's work area, providing mechanical or electronic aids to the employee, transferring the employee to a less strenuous or less hazardous job, or providing family or medical leave to the employee, provided such reasonable accommodation is not in violation of sub. (1) (c) 3.

(b) If an employee requests transfer to a less strenuous or less hazardous job as a reasonable accommodation described in sub. (1) (c) 2., the employer shall transfer the employee as requested for a period up to the duration of the employee's pregnancy known condition related to pregnancy or childbirth if any of the following apply:

1. The employer has a policy or practice, or is subject to a collective bargaining agreement, authorizing or requiring the transfer of an employee with a temporary

disability to a less strenuous or less hazardous job for the duration of the disability.

2.

~~The employee's health care provider or Christian Science practitioner, as defined in s. 103.10 (1) (am), advises the transfer, and~~ The employer can provide the transfer without creating additional employment that the employer would not have created otherwise, discharging any employee, transferring any other employee with more seniority than the employee requesting the transfer, or promoting to a particular job any employee who is not qualified to perform the job.

~~(e) If an employee requests a reasonable accommodation described in sub. (1) (e) 2., the employer may require the employee to provide certification issued by the employee's health care provider or Christian Science practitioner of the medical advisability of the reasonable accommodation to the same extent that the employer requires certification for a temporary disability. No employer may require certification under this paragraph stating more than the following:~~

- ~~1. That the employee requires the reasonable accommodation.~~
- ~~2. The date on which the reasonable accommodation became medically advisable and the probable duration for which the reasonable accommodation will be medically advisable.~~
- ~~3. An explanation of why the reasonable accommodation is medically advisable.~~

SECTION 54. Nonstatutory provisions.

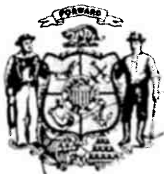
(1) EMPLOYMENT DISCRIMINATION POSTER. The department of workforce development shall revise the poster prepared under section DWD 218.23, Wisconsin

Administrative Code, to include information concerning an employee's right to reasonable accommodation because of ~~pregnancy or a related medical condition~~ a known condition related to pregnancy or childbirth under section 111.36 (1) (c)-2, and (4) of the statutes, as created by this act.

SECTION 65. Initial applicability.

(1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee who is affected by a collective bargaining agreement containing provisions with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

(END)



SN 6126
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1702/r

GMM:kjf:re

unless the employer can demonstrate that
remitting the employee to ^{remain} ~~remain~~ at work
~~would~~ ^{would pose}

2013 BILL

2. Requiring an employee ^{ee} to take family, medical,
or any other type of leave as a reasonable accommodation
of an employee's inability, ^{to} ~~to~~ adequately undertake the ^{of}
job-related responsibilities of a particular job because
of pregnancy, child birth, or a related condition that is
known to the employer, including lactation, ~~or~~
~~another reasonable accommodation~~
~~to be present without posing a~~
hardship on the employer's program,
enterprise, or business.

regn

child birth,

(lactation)

AN ACT to renumber and amend 111.36 (1) (c); and to create 111.36 (1) (c) 2.

2 and 111.36 (4) of the statutes; relating to: reasonable accommodation of an
3 employee's ~~temporary~~ inability to adequately undertake the job-related
4 responsibilities of a particular job because of pregnancy, or a related ~~medical~~
5 condition.

that is known to the employer, including the need to
express breast milk for a nursing child.

all of the following:
1. Refusing

Analysis by the Legislative Reference Bureau

Current law prohibits employment discrimination on the basis of sex, including discrimination against any woman on the basis of pregnancy or a related medical condition. Current law also prohibits employment discrimination on the basis of disability, including refusing to reasonably accommodate an employee's disability, but the Labor and Industry Review Commission (LIRC) has held that pregnancy and pregnancy-related medical conditions are covered under the sex discrimination, and not the disability discrimination, provisions of the Fair Employment Law. *Goodrich v. Duro Paper Bag Mfg. Co, Inc.* (LIRC 02/14/92).

This bill provides that employment discrimination on the basis of sex includes ~~refusing~~ to reasonably accommodate an employee's ~~temporary~~ inability to adequately undertake the job-related responsibilities of a particular job because of pregnancy, or a related ~~medical~~ condition, unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise, or business.

child
birth,

child birth,

Specifically, the bill requires an employer to explore with an employee who requests a reasonable accommodation because of pregnancy, or a related ~~medical~~

BILL

condition (reasonable accommodation) all possible means of providing the reasonable accommodation, including changing the employee's job responsibilities, changing the employee's work hours, relocating the employee's work area, providing mechanical or electronic aids to the employee, transferring the employee to a less strenuous or less hazardous job, or providing family or medical leave to the employee.

Further, the bill requires an employer, on the request of an employee for a transfer to a less strenuous or less hazardous job as a reasonable accommodation, to transfer the employee for a period up to the duration of the employee's pregnancy if:

- 1) the employer has a policy or practice, or is subject to a collective bargaining agreement, authorizing or requiring the transfer of an employee with a temporary disability to a less strenuous or less hazardous job for the duration of the disability;
- or 2) the employee's health care provider advises the transfer, and the employer can provide the transfer without creating additional employment that the employer would not have created otherwise, discharging any employee, transferring any other employee with more seniority than the employee requesting the transfer, or promoting to a particular job any employee who is not qualified to perform the job.

~~Finally, the bill permits an employer to require an employee who requests a reasonable accommodation to provide certification issued by the employee's health care provider of the medical advisability of the reasonable accommodation to the same extent that the employer requires certification for a temporary disability.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 111.36 (1) (c) of the statutes is renumbered 111.36 (1) (c) (intro.) and
2 amended to read:

3 111.36 (1) (c) (intro.) Discriminating against any woman on the basis of
4 pregnancy, childbirth, maternity leave, or a related medical conditions by engaging
5 condition by doing any of the following:

6 1. Engaging in any of the actions prohibited under s. 111.322, including, but
7 not limited to, actions any action concerning fringe benefit programs covering
8 illnesses and disability.

9 SECTION 2. 111.36 (1) (c) 2. of the statutes is created to read:

10 111.36 (1) (c) 2. Refusing to reasonably accommodate an employee's temporary
11 inability to adequately undertake the job-related responsibilities of a particular job

BILL

- 3 -

, child birth,

that is known to the employer,
including the need to express
breast milk for a nursing
child,

(1) because of pregnancy or a related ~~medical~~ condition, as provided in sub. (4), unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise, or business.

SECTION 3. 111.36 (4) of the statutes is created to read:

111.36 (4) (a) If an employee requests a reasonable accommodation ~~described~~ ^{under} sub. (1) (c) 2., the employer shall explore with the employee all possible means of providing the reasonable accommodation, including changing the employee's job responsibilities, changing the employee's work hours, relocating the employee's work area, providing mechanical or electronic aids to the employee, transferring the employee to a less strenuous or less hazardous job, or providing family ~~or~~ ^{medical} leave to the employee. ^{or any other type of}

(b) If an employee requests transfer to a less strenuous or less hazardous job as a reasonable accommodation ~~described in~~ ^{under} sub. (1) (c) 2., the employer shall transfer the employee as requested for a period up to the duration of the employee's ~~condition~~ ^{pregnancy} if any of the following apply:

1. The employer has a policy or practice, or is subject to a collective bargaining agreement, authorizing or requiring the transfer of an employee with a temporary disability to a less strenuous or less hazardous job for the duration of the disability.

2. The ~~employee's health care provider or Christian Science practitioner, as defined in s. 103.10 (1) (am), advises the transfer, and the employer can provide the transfer without creating additional employment that the employer would not have created otherwise, discharging any employee, transferring any other employee with more seniority than the employee requesting the transfer, or promoting to a particular job any employee who is not qualified to perform the job.~~

, subject to sub. (1) (c) 3.,

BILL

1 ~~(c) If an employee requests a reasonable accommodation described in sub. (1)~~
2 ~~(c) 2., the employer may require the employee to provide certification issued by the~~
3 ~~employee's health care provider or Christian Science practitioner of the medical~~
4 ~~advisability of the reasonable accommodation to the same extent that the employer~~
5 ~~requires certification for a temporary disability. No employer may require~~
6 ~~certification under this paragraph stating more than the following:~~

7 1. That the employee requires the reasonable accommodation.
8 2. The date on which the reasonable accommodation became medically
9 advisable and the probable duration for which the reasonable accommodation will
10 be medically advisable.

11 3. An explanation of why the reasonable accommodation is medically
12 advisable

that is known to the employer

SECTION 4. Nonstatutory provisions.

14 (1) EMPLOYMENT DISCRIMINATION POSTER. The department of workforce
15 development shall revise the poster prepared under section DWD 218.23, Wisconsin
16 Administrative Code, to include information concerning an employee's right to
17 reasonable accommodation because of pregnancy^(child birth) or a related ~~medical~~ condition
18 under section 111.36 (1) (c) 2^(and 3) and (4) of the statutes, as created by this act.

SECTION 5. Initial applicability.

20 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee
21 who is affected by a collective bargaining agreement containing provisions with this
22 act on the day on which the collective bargaining agreement expires or is extended,
23 modified, or renewed, whichever occurs first.

(END)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Insert 3-3

SEC CR 111.36 (1) (c) 3.

111.36 (1) (c) ³ 3. Requiring an employee^{ee} to take
family or medical leave under s. 103.10 or 29 USC 2612
of
or any other type of leave provided by the employer^{er} as a
reasonable accommodation under subd. 2., unless the
employer^{er} can demonstrate that permitting the employee^{ee} to
remain at work would ^{pose} pose a hardship on the
employer's program, enterprise, or business.

(end insert)

Malaise, Gordon

From: Rep.Genrich
Sent: Tuesday, July 16, 2013 5:27 PM
To: Malaise, Gordon
Subject: Re: Draft review: LRB -1702/2 Topic: Reasonable accomodation of an employee's pregnancy

Thanks so much, Gordon.

Eric Genrich
State Representative
90th Assembly District

On Jul 16, 2013, at 5:17 PM, "Malaise, Gordon" <Gordon.Malaise@legis.wisconsin.gov> wrote:

> Eric:

>

> I see their point. In drafting it is better to be precise than ambiguous. I will draft up a redraft to better specify the duration of the transfer as set forth below.

>

> Gordon

>

> -----Original Message-----

> From: Rep.Genrich

> Sent: Tuesday, July 16, 2013 1:05 PM

> To: Malaise, Gordon

> Cc: Peters, Steve

> Subject: RE: Draft review: LRB -1702/2 Topic: Reasonable accomodation of an employee's pregnancy

>

> Hi Gordon -

>

> We received this input on the current draft:

>

> "This bill looks really great, and thank you again for your leadership on such an important issue. One thing that jumped out at us was the use of the word "condition" in Section 4(b). We are concerned that it might be interpreted in a limited way or be confusing since 'condition' is used in a different way in Section 2 of the bill. We'd be happy to discuss with you further, but it would probably be best to spell out again that the transfer should last for the duration of the employee's 'inability to adequately undertake the job-related responsibilities of a particular job because of pregnancy, childbirth, or a related condition that is known to the employer.' This way someone who needed a transfer for the duration of her pregnancy to avoid a hazardous work environment, for example, would be entitled to one."

>

> Any thoughts?

>

> Thanks!

>

> Eric Genrich

> State Representative

> 90th Assembly District

>

> From: Rep.Genrich

> Sent: Tuesday, July 02, 2013 10:31 AM

> To: Peters, Steve

> Subject: Fwd: Draft review: LRB -1702/2 Topic: Reasonable accomodation of an employee's pregnancy
>
> Can you share with the group today? I'll call in a bit to chat about what to say.
>
> Eric Genrich
> State Representative
> 90th Assembly District
>
> Begin forwarded message:
>
> From: LRB.Legal <LRB-LegalServices@legis.wisconsin.gov<<mailto:LRB-LegalServices@legis.wisconsin.gov>>>
> Date: July 2, 2013, 9:55:29 AM CDT
> To: Rep.Genrich <Rep.Genrich@legis.wisconsin.gov<<mailto:Rep.Genrich@legis.wisconsin.gov>>>
> Subject: Draft review: LRB -1702/2 Topic: Reasonable accomodation of an employee's pregnancy
>
> State of Wisconsin - Legislative Reference Bureau One East Main Street - Suite 200 - Madison The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Gordon M. Malaise, Senior Attorney, at (608) 266-9738, at gordon.malaise@legis.wisconsin.gov<<mailto:gordon.malaise@legis.wisconsin.gov>?subject=Submitted:%20LRB%20-1702/2%20Topic:%20Reasonable%20accomodation%20of%20an%20employee's%20pregnancy?body=>, or at One East Main Street, Suite 200.
>
> If you would like to jacket the draft for introduction, please click on the appropriate button below. Please select only one button. If you wish to introduce this draft in both houses please contact the drafting attorney to have a companion bill drafted.
> Jacket for the
> ASSEMBLY<<mailto:lrb.legal@legis.wisconsin.gov>?subject=Draft%20Review:%20LRB%20-1702/2%20Topic:%20Reasonable%20accomodation%20of%20an%20employee's%20pregnancy&body=%0APlease%20Jacket%20LRB%20-1702/2%20for%20the%20ASSEMBLY.%0A>
>
>
> Jacket for the
> SENATE<<mailto:lrb.legal@legis.wisconsin.gov>?subject=Draft%20Review:%20LRB%20-1702/2%20Topic:%20Reasonable%20accomodation%20of%20an%20employee's%20pregnancy&body=%0APlease%20Jacket%20LRB%20-1702/2%20for%20the%20SENATE.%0A>
>
>
>
> Please allow one day for jacketing. If this is a "rush" please make a note in your response e-mail so we are aware that we need to give this request a high priority.
>
> If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov<<mailto:LRB.Legal@legis.wisconsin.gov>?subject=Submitted:%20LRB%20-1702/2%20Topic:%20Reasonable%20accomodation%20of%20an%20employee's%20pregnancy?body=> or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.
>
> Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.